IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 723 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULBHAI MALABHAI VORA

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner No. 1

MRS HANSABEN PUNANI, for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/03/2002

ORAL JUDGEMENT

1. The petitioner who has been externed from the place where he was residing along with his father, brother and his family members and he was also serving as Class-IV in Jay Laminar Ltd. Bavla. He was also helping his father in the agricultural work. The show cause notice was issued against the petitioner by the authority

concerned on 12-2-2001. Ultimately, the order of externment was passed on 30-4-2001 and the petitioner was externed from Bavla against which the petitioner preferred appeal before the authority concerned and the same has been rejected on 7-7-2001, the copy of which is annexed at Annexure-C, against which the present Special Cri. Application is preferred by the petitioner.

2. The few relevant facts in short are that the present petitioner was serving as Class-IV employee in Jay Laminar Ltd, Bavla, Dist. Ahmedabad and he was residing in village Rupal, Tal. Bavla, Dist. Ahmedabad along with his parents, brother and family members and he was also helping in the agricultural activities. The uncle of the petitioner Sulemanbhai died without leaving any heir and legal representative behind him and therefore the petitioner was adopted by said Sulemanbhai as his heir and legal representative. Sulemanbhai had also executed will with regard to his properties in favour of the petitioner, which gave rise to the quarrels between he family members of the petitioner and his other cousin brothers. One Usmanbhai Alubhai Vora, who has filed complaint against the petitioner, his brother and father the zerox copy of which has been produced by the learned counsel for the petitioner.

3. The date on which that complaint has been registered is 9-11-2000 and M. Case No. 87/2000 is registered against the petitioner, his brother and father.

4. Heard the leraned counsel for the petitioner and learned APP Mrs. Hansaben Punani, for the respondent State. Learned counsel for the petitioner argued that ultimately, extornment proceedings have been started against the petitioner and he was only selected for that proceedings. Learned counsel for the petitioner has drawn the attention of this Court towards the order passed by the Court which is at para 3 of Page 10 of the file of this case. It is seems that the Court below has not applied its mind and even as per the said order it seems that the authority concerned has not considered the offence which has taken place during the pendency of the present proceedings. Over and above, he has argued that the show cause notice which has been issued by the authority concerned is vague and no place and time has been mentioned in the said notice.

5. Learned counsel for the petitioner has relied on the decision of Division Bench of this Court in the case of Kathi Harsur Rukhad, reported in 1986 G.L.H. 158,

wherein, it has been held as under :

"Bombay Police Act - Ss. 56 and 59 - Show cause notice - Vice of vagueness - Allegations in the show cause notice u/s 59 (1) of the Act did not indicate period during which and area in which the proposed externee indulged in the nefarious activities - Both from the point of view of period as well as area, no indication whatsoever was given to the proposed externee so that he can meet allegations made in show cause notice effectively Held, that the proposed externee was not given any reasonable opportunity to put forward his case and that the impugned show cause notice failed to satisfy the test for being held as valid show cause notice u/s 59 of the Act."

6. It is clear from the material on record that the petitioner has been externed from 30-4-2001 for a period of one year and practically one year is now over.

7. In view of the above, this petition is allowed. Order dated 30-4-2001 passed by the Sub-Division Magistrate, Dholka, Dist. Ahmedabad at Annexure-B as well as the order 7-7-2001 passed by the Dy. Secretary, Home Department, Gandhinagar - Annexure-C to this petition are quashed and set aside. Rule is made absolute. D.S. is permitted.

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/JVSatwara/